



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 3, 1989

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

J. Glen Sanford, Treasurer  
Jim Santini for Senate  
801 South Rancho Drive  
Quail Park 1, Suite E-3A  
Las Vegas, Nevada 89106

RE: MUR 2314  
Jim Santini for Senate  
J. Glen Sanford, as treasurer

Dear Mr. Sanford:

On January 16, 1987, the Federal Election Commission notified Jim Santini for Senate ("the Santini Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was enclosed with that notification. On August 4, 1987, the Commission notified you that it had found reason to believe that the Santini Committee and you, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) and 11 C.F.R. § 110.6(d)(2) in connection with the acceptance of contributions for which the National Republican Senatorial Committee ("the NRSC") served as a conduit or intermediary and over which the NRSC may have exercised direction or control.

Upon further review of the allegations contained in the complaint and information supplied by the Santini Committee and the NRSC, the Commission, on January 24, 1989, found that there is reason to believe that the Santini Committee and you, as treasurer, violated 11 C.F.R. § 110.6(c)(3) and 2 U.S.C. § 434(b) with respect to the apparent failure to report the NRSC as a conduit or intermediary for some contributions and 2 U.S.C. § 434(b) for the apparent failure to report the acceptance of contributions from the NRSC in the form of solicitation costs. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Santini Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 15 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications or other communications from the Commission.

In the absence of any additional information which demonstrates that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify

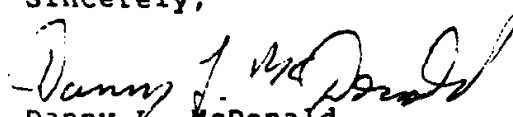
J. Glen Sanford

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the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

  
Danny L. McDonald  
Chairman

Enclosures

Factual and Legal Analysis  
Order and Subpoena  
Designation of Counsel Form

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99° 04° 39S° 077° 1

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

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MUR 2314

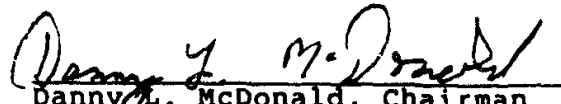
**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: J. Glen Sanford, Treasurer  
Jim Santini for Senate  
801 South Rancho Drive  
Quail Park 1, Suite E-3A  
Las Vegas, Nevada 89106

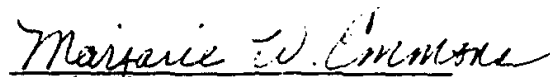
Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this *30th* day of  
*Jan.*, 1989.

  
Danny L. McDonald, Chairman  
Federal Election Commission

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments

Instructions

Definitions

Questions and Document Request (2 pages)

3220-563-40-66  
99-04-395-0773

### INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1985, to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms below are defined as follows:

"Document" shall mean the copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known or believed by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-cuts, and all other writings and other data compilations from which information can be obtained.

The "NRSC" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents, or attorneys thereof.

The "Santini campaign" or the "Santini Committee" shall mean the committees or other entities for the receipt of contributions for James D. Santini for election to the U.S. Senate in 1986, including, but not limited to, Jim Santini for Senate (his principal campaign committee) and Friends of Jim Santini (the exploratory committee that became Jim Santini for Senate in 1986), including all officers, employees, agents, or attorneys thereof.

The term "general solicitations" means solicitations for contributions or announcements of solicitations for contributions that do not ask the contributor or suggest to the contributor that he or she designate at that time a specific candidate (identified by name or state) to receive the solicitee's contribution. Such solicitations may have preceded, or may have been made by the NRSC in contemplation of, solicitations asking the contributor to designate a specific candidate.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

You are asked to respond to the following interrogatories and request for documents:

A review of the reports of the NRSC for 1985 and 1986 indicates that it passed on contributions from individuals and political action committees to the Santini Committee in the form of NRSC checks and in the form of contributor checks. The reports of the Santini Committee indicate that the NRSC was a "conduit" for \$340,938 in contributions and that the NRSC was an "intermediary" for \$111,893.34 in contributions for a total of \$452,831.34. According to the NRSC, it passed on \$924,006.33 to the Santini Committee, \$537,229.67 in the form of NRSC checks and \$386,776.66 in the form of contributor checks.

1. Explain the discrepancy between the total stated by the NRSC as passing through the NRSC to the Santini campaign and the total reported by the Santini Committee as passing through the NRSC.

The following question pertains to the Direct-To Program, a program implemented by the NRSC which resulted in the contributions referred to above. In this program, the NRSC would solicit individuals and political action committees for contributions. These contributions would be designated by those original contributors (either when the contributions were first sent or subsequently) for specific Republican candidates, including James D. Santini. The NRSC acted as a conduit or intermediary for such contributions, i.e., receiving the contributions and passing them on in the form of the original contributors' checks or an NRSC check.

2. State your knowledge during 1985 and 1986 as to the NRSC's program and/or operations involving the NRSC as a solicitor of contributions and as a conduit or intermediary for contributions from individuals and political action committees to the Santini Committee. Your response should state how such knowledge was obtained and should include, but not be limited to:

a. knowledge of the existence, contents, and meaning of the Direct-To Program Agreement between the NRSC and the Santini campaign (copy enclosed), e.g., the meaning of the phrase "the NRSC's masterfile" and the meaning of the phrase "direct fundraising costs associated with a particular mailing or event" (as opposed to other solicitation costs of the program not associated with a particular mailing or event);

b. knowledge as to the types of NRSC solicitations made, e.g., general solicitations by mail, phone, or at meetings, solicitations asking for the designation by the individual or political action committee of specific candidates (identified by name or state), and phone solicitations to contributors who had already made contributions asking for designation of specific candidates;

c. knowledge as to the frequency and extent of the types of



solicitations discussed in response to 2b, e.g., when and how often such solicitations occurred and the number of persons solicited by the NRSC for contributions to Republican Senatorial campaigns and to the Santini campaign;

d. knowledge of how solicitations were conducted with respect to each of the specific operations of the Direct-To Program, i.e, Direct-To, Direct-To Auto, The Trust Program, Majority '86, and Miscellaneous Conduiting;

e. knowledge as to how contributions were to be passed on to candidates, i.e., either in the form of contributor checks or in the form of NRSC checks cut after redesignation; and

f. knowledge as to the types of costs (e.g., mailing, telephone, travel, computer, labor, costs of setting up the program, costs of general solicitations) and the extent of costs (including amounts ultimately paid or unpaid by the Santini Committee) incurred by the NRSC for the solicitation program.

3. State the most recently known home address and business address of Joan Henderson.

#### Request for Documents

Provide copies of all documents pertaining to the NRSC's conduit or intermediary operations, including, but not limited to, agreements between the Santini campaign and the NRSC; correspondence between the Santini campaign and the NRSC pertaining to the planning for or actual conduct of such operations; telephone memoranda and internal memoranda pertaining to the planning for or actual conduct of such operations; and Santini campaign forms and correspondence confirming receipt of the contributions.

## **FEDERAL ELECTION COMMISSION**

### **FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Jim Santini for Senate  
J. Glen Sanford, as treasurer

#### **I. BACKGROUND**

##### **A. Prior Reason to Believe Findings**

This matter involved a complaint stating that the National Republican Senatorial Committee ("the NRSC") and/or the Republican National Committee ("the RNC") solicited contributions from individuals, that such contributions were sent to the NRSC and/or the RNC and that the NRSC and/or the RNC through the NRSC disbursed these funds to Jim Santini for Senate ("the Santini Committee"). It is alleged that the NRSC and/or the RNC exercised direction or control over the choice of the recipient and, therefore, contributed such funds according to 11 C.F.R. § 110.6(d). The complainant asserted that, starting in March, 1986, the NRSC obtained \$700,000 in this manner and determined that the Santini Committee would receive these funds.

Complainant cited what he considered to be the best example of such an exercise of direction or control, referring to the report in the Santini Committee's 1986 April Quarterly of the receipt on March 31, 1986, of \$19,012 in individual contributions for which the NRSC was the conduit. That report listed numerous small contributions from individuals in various states. Complainant pointed out that Mr. Santini did not announce his candidacy until March 24, 1986, and maintained that it would have been impossible for such contributions to have been made to the

Santini Committee without the exercise of direction or control by the NRSC.

In making his allegations, complainant was alleging a violation of 2 U.S.C. § 441a(f) by the Santini Committee. In addition, complainant alleged that these contributions were not reported correctly.

The treasurer of the Santini Committee responded that the contributions forwarded to the Santini Committee by "national Republican organizations" were "entirely legal" and "properly reported." The candidate stated that he understood that the NRSC was following standard disbursement procedures for national Republican committees.

Counsel for the NRSC stated that, in March, 1986, it had an "earmarking" or "conduit" program for the Santini Committee. Counsel stated that, between March 25 and March 31, 1986, "contributors directed the NRSC to forward to the Santini campaign all or portions of specific contributions they had already sent in response to NRSC-originated fundraising appeals."

Counsel stated that during the 1985-6 election cycle, the NRSC made arrangements "to enable contributors to earmark their contributions to specific candidates through a telephone contact, followed by a confirmatory letter. This program was known as the "'direct to' program." According to an affidavit of the NRSC's Comptroller and Director of Administration, when the NRSC received a check pursuant to a fundraising appeal, the contribution was either recorded as a contribution to the NRSC and placed in the NRSC's operations account or it was deposited

in a separate account for the "direct to" program, "predetermined by the size of the check and other administrative factors." If a check was deposited in the latter account, the contributor was subsequently called by one of the NRSC phone bank callers. During these calls, the contributor "was thanked for the recent contribution, told that specific campaigns were in need of assistance, and asked whether he or she wished to direct all or a portion of the contribution to any of those campaigns."

According to counsel's response:

a minimum of three candidates (and often four) were always identified by the NRSC caller. Contributors contacted by telephone directed their contributions in a variety of ways: to be divided between all of the candidates mentioned, to be divided between only some of them, to be sent to only one of them, to be sent to candidates not mentioned by the NRSC caller, or to be sent to no candidate.

If the contributor stated that all or part of his contribution should be sent to a specific candidate, the NRSC forwarded the amount of the contribution. Otherwise, the funds were placed in the NRSC operations account.

Counsel also described the arrangements between the NRSC and the recipient Senatorial committees. He stated:

NRSC entered into agreements with campaigns which received earmarked funds through this "direct-to" program. See sample Agreement at Exhibit 2. The agreements provided that those campaigns would be billed on a monthly basis for their costs associated with this program, including the services of the telephone callers, the correspondence with contributors, and NRSC's overhead and other costs. Id., and Preztunik Affidavit at ¶ 11. Each campaign was billed a flat rate of \$3 per earmarked

contribution received through the "direct-to" program, on the independent advice of two different accounting firms. Id. All bills for this service were presented to all participating Senate campaigns, including Congressman Santini's, and have been paid in full.

The 1986 reports of the NRSC denoted the contributions that passed through the NRSC and were sent on to the Santini Committee. These reports explicitly stated whether the contribution was transmitted by NRSC check or by contributor check and reported contributions passing through its account on both its receipt and expenditure schedules. The Santini Committee also denoted contributions that passed through the NRSC, indicating that the NRSC acted as a "conduit" for some contributions passing through the NRSC and as an "intermediary" for other contributions passing through the NRSC. According to the Santini Committee reports, the total of contributions for which the NRSC served as an intermediary or conduit was \$452,831.34, i.e., \$340,938.00 as a conduit and \$111,893.34 as an intermediary. It appeared, however, that there were \$8,000 in contributions sent to the Santini campaign from late January to mid-March, 1986, that were not reported by either Friends of Jim Santini, which was Mr. Santini's exploratory committee, or by Jim Santini for Senate as passing through the NRSC.

Although the Santini Committee reported contributions passed on to it in the form of NRSC checks or contributor checks, its reports contained no indication that the NRSC exercised direction or control over the contributions or that the contributions were to be considered as contributions from both the original

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contributors and the NRSC.

Based on the foregoing information, the Commission, on July 28, 1987, found reason to believe that the Santini Committee and its treasurer violated 2 U.S.C. §§ 441a(f) and 434(b) and 11 C.F.R. § 110.6(d)(2) and decided to take no action at that time as to the allegation that the Santini Committee violated 11 C.F.R. § 110.6(c)(3). The Commission also approved interrogatories and requests for documents.

#### B. Responses

The Santini Committee submitted three responses, one from Mr. Sanford, the treasurer, one from Ann Holbach, the assistant campaign manager and first comptroller, and one from James C. Chachas, another comptroller. The replies from these persons were generally unresponsive, stating only a vague knowledge of the earmarking programs. No documents were submitted and it appears that little or no effort was made to review committee documents in the preparation of responses. Ms. Holbach did state, however, that she did not know whether the NRSC communicated with contributors before or after a contribution to be sent on had been received by the NRSC.

The NRSC described five different operations within the "Direct-To" Program and stated the amounts sent on to the Santini Committee. These operations were: (1) Direct-To, which resulted in \$71,627.33 in contributions transmitted by NRSC checks; (2) Direct-To Auto, which resulted in \$399,131.80 in contributions transmitted by NRSC checks; (3) Miscellaneous Conduiting, which resulted in \$28,295.54 in contributions transmitted by NRSC

checks and \$235,901.66 in contributions transmitted by contributor checks; (4) the Trust Program, which resulted in \$5,600 in contributions transmitted by NRSC checks and \$107,875 transmitted by contributor checks; and (5) Majority '86, which resulted in \$32,575 transmitted by NRSC checks and \$43,000 transmitted by contributor check. Thus, according to the NRSC, \$537,229.67 in contributions were transmitted by NRSC checks and \$386,776.66 were transmitted by contributor checks.

The NRSC described each of these operations. Two of these operations appear to have involved the receipt of unearmarked contributions by the NRSC and the subsequent communication to contributors during which such contributors were asked to designate candidates to receive NRSC checks. These were the Direct-To operation and the Majority '86 operation. The other operations involved the receipt by the NRSC of contributions which were earmarked at the time they were made or at the time the sums were pledged.

There were also copies of the NRSC solicitations which yielded the contributions for the Direct-To operation. These were the solicitations that preceded the phone calls in which the NRSC asked for the earmarking of contributions already made. These solicitations did not mention specific candidates or states and did not state that the contributor would be called subsequently to designate a recipient. Thus, it appears that the contributions made pursuant to those solicitations were made without the knowledge that they could subsequently be earmarked.

The documents are not as clear with respect to the original

# THESE

There were arrangements between the NRSC and the Santini Committee whereby the Santini Committee paid the NRSC for solicitation costs. One of the arrangements for payments was



explained by the NRSC's Controller and Director of Administration in response to the complaint in this matter and is described above. The cost of \$3 per contribution covered the services of the telephone callers, correspondence with contributors who had directed a contribution to a candidate, and an allocated portion of the NRSC's overhead and other costs. According to the affidavit of the NRSC's Comptroller and Director of Administration, the fee was derived pursuant to the opinions of two accounting firms as to the "value of the services provided" to candidates through the Direct-To Program. It appears that these arrangements applied to the Direct-To operation and to some of the Majority '86 operation. Another arrangement pertained to a Direct-To Auto solicitation involving a mass mailing on September 2, 1986, in which persons were asked to make a contribution to be divided among four candidates listed by state. For that solicitation, each candidate committee was charged \$.33 per contribution forwarded by the NRSC, an amount determined by estimating the cost of each mailing (\$1.32) and dividing it by four. The NRSC then charged for only successful solicitations, leaving the cost of unsuccessful solicitations unpaid for. According to the NRSC, the cost of that mailing was \$672,000. The NRSC was reimbursed by the candidate committees in amounts totalling only \$63,432, thus leaving \$608,568 in solicitation costs unpaid for. In the case of the latter arrangement, it appears that the amounts charged to each candidate committee were based on the number of contributions earmarked for the particular candidate rather than on the actual cost of the solicitation.

The first arrangement (i.e., the arrangement providing for a \$3 payment per contribution) may also have involved payment by the individual candidate committees for only successful solicitations, rather than payment for all of the allocable solicitation costs.

The Nevada Senate race accounted for 12.5 per cent of the Senate races listed in the solicitation letters for the September 2 mailing. It may be concluded, therefore, that \$76,071 in solicitation costs for the Santini campaign were not paid for.<sup>1</sup> The reports of the NRSC indicate that the Santini Committee made fifteen payments totalling \$58,302.29 to the NRSC for fundraising costs, mailing services, and "fee[s]" (although it is not known whether these payments were all in connection with conduit operations). In addition, according to the Direct-To Program Agreement, up to five per cent of the NRSC's maximum coordinated expenditure limit, i.e., the limit under 2 U.S.C. § 441a(d), for a candidate's campaign would be escrowed until October 20, 1986, and used to pay for the campaign's unpaid bills for the solicitation costs. The coordinated expenditure limit of the NRSC for Nevada was \$87,240, five per cent of which is \$4,362. According to the information available, therefore, the most the Santini Committee paid for solicitation purposes in connection with the conduit operations was \$62,664.29. This amount, which is a total for the year, is still exceeded by the unpaid amounts

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1. There were 24 different versions of the solicitation letters sent September 2. Each solicitation referred to "[o]ur Republican Senate candidates in" and then listed four states. Of the 96 references to a state, i.e., four states in each of 24 letters, Nevada was referred to twelve times.

for the September 2 mailing alone which accounted for only about 40 per cent of the contributions made to the Santini Committee under all Direct-To operations. Therefore, although the total of unpaid solicitation costs is not known, the figures thus far indicate that there was a significant amount.

## II. LEGAL ANALYSIS

It appears from the information available in the reports of the Santini Committee and the responses of the NRSC that the Santini Committee failed to report a large number of contributions as having passed through the NRSC. It is not known to what extent the discrepancy is due to a failure to report the contributions at all and to what extent it is due to a failure to report the NRSC as a conduit.<sup>2</sup> Nevertheless, the total reported by the Santini Committee as passing through the NRSC was \$452,831.34, i.e., \$471,174.99 less than the total stated in the NRSC's response. Section 110.6(c)(3) of the Commission Regulations states that the intended recipient of a contribution for which there was a conduit "shall disclose on his next report each conduit through which the contribution passed." Section 434(b)(3)(A) of Title 2 requires a reporting political committee to identify each person (other than a political committee) whose contribution or contributions aggregate more than \$200 in the calendar year, along with the date and amount of such

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2. Copies of letters from the NRSC to the Santini campaign, dated in January and February, 1986, indicate that the NRSC was a conduit for contributions to the Santini campaign in the form of NRSC and contributor checks during those months, but the Santini Committee's reports does not disclose the receipt of conduited contributions during those months.

contribution, and 2 U.S.C. § 434(b)(3)(B) requires the committee to identify each political committee that contributes along with the date and amount.

Based on the foregoing analysis, there is reason to believe that Jim Santini for Senate and J. Glen Sanford, as treasurer, violated 11 C.F.R. § 110.6(c)(3) with respect to the apparent failure to report the NRSC as a conduit, and there is reason to believe that the Santini Committee and Mr. Sanford, as treasurer, violated 2 U.S.C. § 434(b) with respect to the apparent failure to report contributions. (The Commission has already found reason to believe that the Santini Committee violated 2 U.S.C. § 434(b) with respect to the failure to indicate that contributions sent through the NRSC were made by the NRSC, as well as by the original contributor.)

It appears that further investigation is necessary with respect to the total of contributions by the NRSC to the Santini Committee. One of the figures that is needed is the cost of the solicitations by the NRSC for contributions to be sent to the Santini campaign. The explanations of the NRSC indicate that the amounts charged to and paid by the Santini Committee for some of the solicitations were based on the number of successful solicitations alone, rather than on the costs for both successful and unsuccessful solicitations, and there is a lack of certain information as to costs and charges for other Direct-To solicitations. Therefore, the actual costs of all the solicitations may have exceeded the amounts charged to and paid by the Santini Committee. The question arises as to whether any

solicitation costs not paid for were contributions to the Santini Committee.

Section 431(8)(A) of Title 2 and 11 C.F.R. § 100.7(a)(1) define "contribution" to mean "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." Section 100.7(a)(1)(iii)(A) of the Commission Regulations defines "anything of value" as including all in-kind contributions, and states that "the provision of any goods or services without charge . . . is a contribution."

According to 11 C.F.R § 106.1(a), "expenditures . . . made on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived." Section 106.1(b) states that an authorized expenditure (other than a section 441a(d) expenditure) made by a political committee on behalf of a candidate shall be reported as a contribution in-kind to the candidate on whose behalf the expenditure was made. Section 106.1(c)(1) provides that expenditures for fundraising need not be attributed to individual candidates "unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate." Section 106.1(d) defines "clearly identified" to mean either that the candidate's name appears, a photograph or drawing of the candidate appears, or "the identity of the candidate is apparent by unambiguous reference."

Based on the above-stated sections, it appears that, in

order to determine whether the cost for all of the solicitations should be considered as an in-kind contribution of the NRSC to the Santini Committee, it is necessary to establish that the costs were incurred for the purpose of influencing a federal election, that the Santini Committee derived a benefit, and that the expenditures resulting in that benefit can be directly attributed to Santini.

The written solicitations and phone scripts provided by the NRSC discuss the need of funds by the Senate candidates for the upcoming election. In addition, the Santini Committee benefitted from both the successful and unsuccessful solicitations. If the Santini Committee had undertaken a comparable solicitation effort, it would have paid for all of the solicitation costs; thus, it may have been relieved of the financial burden of the unsuccessful solicitations. Furthermore, since each of the written and phone solicitations contained an electioneering message, something of value was indeed provided by the NRSC to the Santini campaign, regardless of the success of the solicitation. Finally, Mr. Santini was clearly identified either by name or by the political party, office sought, and state in solicitations sent by the NRSC and submitted as documents. Thus, in summary, it appears that any amounts for solicitation costs for Santini that were not paid by the Santini Committee were contributions and should be added to the total of contributions by the NRSC to the Santini Committee.

The solicitation of contributions by the NRSC was a service that the Santini Committee knew it was receiving. The Direct-To

Program Agreement signed by both the NRSC and the Santini Committee discussed the billing of campaigns on a per contributor basis. The agreement also provided for a liaison between the NRSC and the Santini Committee with respect to the conduit program, and the responses of Santini Committee personnel indicated that there was contact between the Santini campaign and the NRSC with respect to the receipt of conduited contributions. The Santini Committee, therefore, may have known the circumstances of the solicitations conducted under the Direct-To Program and may be said to have knowingly accepted the amounts of the unpaid for solicitation costs as in-kind contributions. Consequently, those costs should be added to the amount of the Santini Committee's apparent violation of 2 U.S.C. § 441a(f). Moreover, such costs should have been reported according to 2 U.S.C. § 434(b)(3)(B). Therefore, there is reason to believe that the Santini Committee and Mr. Sanford, as treasurer, violated 2 U.S.C. § 434(b) with respect to the failure to report such costs.